

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

RAYMOND H. MEHNER,)
BARBARA A. MEHNER, MARK A.)
MEHNER, ANDREA L. MEHNER,)
and ANTHONY Q. MEHNER,)

4:10CV3009

Plaintiffs,)

**MEMORANDUM
AND ORDER**

v.)

DEPARTMENT OF HOMELAND)
SECURITY,)

Defendants.)

This matter is before the court on its own motion. As discussed below, the court has serious doubts that all Plaintiffs intend to proceed pro se in this matter. In light of this, the court will give each Plaintiff 21 days in which to file a notice of his or her intent to proceed without counsel in this matter.

BACKGROUND

Plaintiffs filed this action through counsel on January 20, 2010. (Filing No. [1](#).) Plaintiffs' counsel moved to withdraw from representation on June 25, 2010. (Filing No. [20](#).) Thereafter, the court granted counsel's motion and ordered Plaintiffs to either retain substitute counsel or file a statement informing the court of their intent to proceed without counsel. (Filing No. [21](#).) On August 10, 2010, a Motion for Extension of Time was filed "by Andrea Mehner for Mark A. Mehner," purportedly on behalf of all Plaintiffs, seeking a 60-day extension of time to obtain substitute counsel. (Filing No. [25](#) at CM/ECF p. 2.) The only signature appearing on this pleading was that of "Andrea Mehner for Mark A. Mehner." The Magistrate Judge granted the Motion for Extension of Time. (Filing No. [27](#).)

On October 11, 2011, Plaintiff Andrea Mehner sent a document entitled “Motion for Leave to Amend” by e-mail to the Magistrate Judge’s chambers and by facsimile to the Clerk of the court. (Filing No. [28-1](#), Attach. 1.) Because the “Motion for Leave to Amend” was improperly filed, the Magistrate Judge did not consider it a properly filed motion. (Filing No. [29](#) at CM/ECF p. 2.) Rather, the Magistrate Judge electronically filed the document as evidence of Plaintiffs’ intent to proceed without counsel. (*Id.*) The “Motion for Leave to Amend” was signed only by Andrea Mehner. (Filing No. [28-1](#), Attach. 1, at CM/ECF p. 3.)

All named Defendants have filed Motions to Dismiss in this matter. (Filing Nos. [35](#), [38](#), [41](#), and [42](#).) Plaintiffs have not responded to Defendants’ Motions in any way.

ANALYSIS

[Rule 11 of the Federal Rules of Civil Procedure](#) requires that every pleading be signed by the party filing it, or by that party’s attorney. See [Scarrella v. Midwest Federal Sav. And Loan, 536 F.2d 1207, 1209 \(8th Cir. 1976\)](#) (“Rule 11 of the Federal Rules of Civil Procedure requires that every pleading be signed by the party filing it, or by that party’s attorney. Here the notice of appeal, which was purported to be on behalf of all appellants, was signed only by appellant Scarrella, who is not an attorney. Since appellants Bullock and Brisson did not sign the notice of appeal, their appeals must be dismissed.”). As set forth above, the Magistrate Judge electronically filed Plaintiff Andrea Mehner’s “Motion for Leave to Amend” as evidence of Plaintiffs’ intent to proceed without counsel. However, this pleading does not, by itself, demonstrate Plaintiffs’ intent to proceed pro se in this matter, particularly where no Plaintiff other than Andrea Mehner has signed any pleading, and no Plaintiff has responded to Defendants’ Motions to Dismiss. In light of this, the court has serious doubts that any Plaintiff intends to proceed without counsel in this matter.

The court will require all Plaintiffs to file a clear notice indicating their intent to proceed without counsel, including Plaintiff Andrea Mehner.

IT IS THEREFORE ORDERED that:

1. On the court's own motion, each Plaintiff shall be given 21 days in which to file a signed notice of his or her intent to proceed pro se in this matter. Plaintiffs are warned that failure to file adequate notice will result in this matter being dismissed as to each Plaintiff who fails to comply with this court's order for failure to prosecute diligently.

2. The Clerk of the court is directed to file a pro se case management deadline with the following text: May 17, 2011: deadline for each Plaintiff to file

DATED this 26th day of April, 2011.

BY THE COURT:

Richard G. Kopf
United States District Judge

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